

AMENDED IN ASSEMBLY JUNE 1, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1452

Introduced by Assembly Members Wolk and Huffman

February 23, 2007

An act to add Part 6 (commencing with Section 9600) to Division 5 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 1452, as amended, Wolk. Central Valley ~~Flood Protection~~. *flood protection*.

Under existing law, the Department of Water Resources performs various flood control activities throughout the state. Existing law authorizes the Reclamation Board to engage in various flood control activities along the Sacramento River and the San Joaquin River, their tributaries, and related areas. Existing law requires the board to establish and enforce standards for the maintenance and operation of, and to undertake other responsibilities with regard to, flood control works under its jurisdiction.

The Disaster Preparedness and Flood Prevention Bond Act of 2006 authorizes the issuance of bonds in the amount of \$4,090,000,000 for the purposes of financing a disaster preparedness and flood prevention program.

This bill would enact the Central Valley Flood Protection Act of 2008. The bill would prohibit the board from approving, and the department from providing, funding for any flood protection project that narrows flood channels or reduces the capacity of the flood protection system in the Sacramento-San Joaquin Valley to convey water. The bill would declare that it is the policy of the state that, to the maximum extent

permitted by law, the expenditure of funds for flood protection in the Sacramento-San Joaquin Valley reflect specified priorities. The bill would require the department to correct deficiencies in flood protection facilities that present an imminent risk of failure and threaten human life. The department would be required to seek the maximum amount of federal and local cost-sharing contributions, but would be prohibited from delaying specified emergency repairs to obtain those contributions.

The department would be required to investigate, develop, and establish a floodway or bypass, acquire land, or construct one or more facilities to significantly reduce flood stage in the San Joaquin River Watershed. The bill would authorize the department to investigate and assess the level of flood protection for communities in the Sacramento-San Joaquin Valley. The bill would authorize the department to provide financial assistance to cities, counties, and other local public entities to repair and replace levees, weirs, bypasses, and facilities in accordance with certain requirements and to develop regional or local plans of flood protection. The bill would require the department to prepare a Central Valley Flood Protection Plan for the Sacramento-San Joaquin Valley. The bill would authorize the department to identify additional facilities that may become facilities of the State Plan of Flood Control, as defined.

For the purpose of implementing the Disaster Preparedness and Flood Prevention Bond Act of 2006, the bill would require certain contracts to provide for the payment of additional compensation as a bonus for early completion of a project; require the department to develop project solicitation and evaluation guidelines for a stormwater flood management program; impose requirements relating to an annual investment strategy that the Governor is required to prepare; authorize the department to implement specified flood protection improvements for urban areas if certain requirements are met; and prohibit the expenditure of more than \$100,000,000 on behalf of prescribed levee improvement programs until the department and the Department of Fish and Game carry out certain duties.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Part 6 (commencing with Section 9600) is added
- 2 to Division 5 of the Water Code, to read:

1 PART 6. CENTRAL VALLEY FLOOD PROTECTION ACT
2 OF 2008
3

4 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS
5

6 9600. This act shall be known and may be cited as the Central
7 Valley Flood Protection Act of 2008.

8 9601. The Legislature finds and declares all of the following:

9 (a) In November 2006, California voters approved the issuance
10 of an unprecedented amount of general obligation bonds for
11 infrastructure, including almost five billion dollars
12 (\$5,000,000,000) for flood protection. While those bonds will
13 allow California to fix its aging flood infrastructure, that amount
14 only begins to address the state's funding requirements to create
15 a sustainable flood protection system for the Central Valley. With
16 limited funding, the State of California needs to establish priorities
17 for allocating these bond funds.

18 (b) The challenge of protecting Californians from a flood in the
19 Central Valley has changed. The flood protection system in the
20 Central Valley was designed to wash gold-rush era sediment
21 downstream and out to sea, with narrow channels created by levees
22 of varying quality. The flood protection system, established in
23 1913, worked so well that the sediment has washed out and
24 low-level flood flows now wash away the levees. Two minor floods
25 in 2006 created 71 new sites of critical levee erosion, which will
26 require substantial funding for repair. Decisions as to future
27 expenditure of flood funding therefore need to reflect these new
28 challenges.

29 (c) The governmental context for protecting Californians from
30 floods also has changed. A 2003 decision by a state court of appeal
31 held the state responsible for not having a reasonable plan for
32 protecting Sacramento Valley residents and businesses from floods.
33 Since Hurricane Katrina, the United States Army Corps of
34 Engineers has received less funding for flood protection in the
35 Central Valley, and has relied on state funding for its work. The
36 Federal Emergency Management Agency has begun preparing
37 new flood maps that will show more Central Valley communities
38 at higher risk of flooding. Central Valley cities and counties have
39 developed a greater awareness of the flood risk that their residents
40 face.

(d) California has invested billions of dollars in its existing flood protection facilities, but those facilities have rapidly deteriorated in recent years. Those facilities have served California well in the past, but their continued success may be questioned under the rapidly changing conditions in the Central Valley. The current flood protection system does not have the capacity to convey a substantial amount of floodwater without the threat of damage to growing urban centers. Climate change is likely to exacerbate flood conditions. The state needs to continue repairing the current system, as it considers how to reformulate its plan for flood protection in the Central Valley.

9602. Unless the context otherwise requires, the definitions set forth in this section govern the construction of this part.

(a) “Board” means the Reclamation Board.

(b) “Central Valley Flood Protection Plan” means the plan prepared pursuant to Section 9617 and includes the State Plan of Flood Control as defined in subdivision (j) of Section 5096.805 of the Public Resources Code.

(c) “Facilities of the State Plan of Flood Control” has the same meaning as set forth in subdivision (e) of Section 5096.805 of the Public Resources Code.

(d) “Flood hazard zone” means an area subject to flooding that is delineated as either a special hazard area or an area of moderate or minimal hazard on an official flood insurance rate map issued by the Federal Emergency Management Agency.

(e) “Levee flood protection zone” means the area, as determined by the board or the department, that is protected by a project levee.

(f) “One hundred-year standard” means protection that is sufficient to withstand flooding that has a 1-in-100 chance of occurring in any given year, without regard to any previous presumption lacking substantial evidence that the relevant levee was sufficient to withstand that flooding, considering reasonably foreseeable development in the watershed.

(g) “Project levee” has the same meaning as set forth in subdivision (g) of Section 5096.805.

(h) “Sacramento-San Joaquin Valley” means any lands in the bed or along or near the banks of the Sacramento River or San Joaquin River, or any of their tributaries or connected therewith, or upon any land adjacent thereto, or within any of the overflow basins thereof, or upon any land susceptible to overflow therefrom.

1 (i) "Urban area" means any contiguous area in which more than
2 10,000 residents are protected by project levees.

3 9603. Nothing in this part shall be construed to inhibit or delay
4 the completion of emergency repairs to ~~project~~ levees.

5 9604. The board shall not approve and the department shall
6 not provide funding for any flood protection project that narrows
7 flood channels or otherwise reduces the capacity of the flood
8 protection system in the Sacramento-San Joaquin Valley to convey
9 floodwater.

10 9605. (a) For purposes of complying with the Public Contract
11 Code, all expenditures funded pursuant to Sections 5096.821 and
12 5096.825 of the Public Resources Code shall be deemed to be in
13 response to an emergency.

14 (b) All contracts funded pursuant to Sections 5096.821 and
15 5096.825 of the Public Resources Code shall provide for the
16 payment of additional compensation to the contractor as a bonus
17 for completion of a project prior to the time specified in the
18 contract. This provision shall be included in the specifications and
19 shall clearly set forth the basis for that payment.

20 9606. (a) By March 15, 2008, the department, in collaboration
21 with the State Water Resources Control Board, shall develop
22 project solicitation and evaluation guidelines to implement Section
23 5096.827 of the Public Resources Code. The guidelines may
24 include a limitation on the dollar amount of grants to be awarded.

25 (b) Before finalizing the guidelines and disbursing grants for
26 the purposes of Section 5096.827 of the Public Resources Code,
27 the department shall conduct two public meetings to consider
28 public comments. The department shall publish the draft
29 solicitation and evaluation guidelines on its Internet Web site at
30 least 30 days before the public meetings. One meeting shall be
31 conducted at a location in Northern California and one meeting
32 shall be conducted at a location in Southern California. To the
33 extent feasible, the department shall provide outreach to
34 disadvantaged communities to promote access and participation
35 in those meetings.

36 (c) The guidelines shall include a priority for projects that
37 address the needs of disadvantaged communities.

38 (d) Upon adoption of the guidelines, the department shall
39 transmit copies of the guidelines to the fiscal committees and the
40 appropriate policy committees of the Legislature.

1 9607. The annual investment strategy to meet long-term flood
2 protection needs and minimize state taxpayer liabilities from
3 flooding required by paragraph (3) of subdivision (b) of Section
4 5096.820 of the Public Resources Code shall include an evaluation
5 and recommendation with regard to all of the following:

6 (a) Strategies to integrate the operation of the state's flood
7 protection system and water supply and conveyance system.

8 (b) Investments to increase the protection of existing urban
9 areas.

10 (c) The expansion of floodway conveyance capacity wherever
11 feasible.

12 (d) The opportunities for reservoir reoperation in conjunction
13 with flood plain and groundwater storage to increase flood
14 protection and water supply benefits.

15 (e) The design of flood control improvements to reduce erosion
16 and maintenance costs.

17 (f) Impacts on water supply and on the California Bay-Delta
18 Ecosystem Restoration Program.

19
20 CHAPTER 2. FLOOD SAFE CALIFORNIA PROGRAM
21

22 9610. The department and the board shall implement the Flood
23 Safe California Program as provided in this chapter, in order to
24 maintain, redesign, and improve the flood protection systems in
25 the Sacramento-San Joaquin Valley.

26 9611. (a) It shall be the policy of the state that, to the maximum
27 extent permitted by law, the expenditure of bond funds for flood
28 protection in the Sacramento-San Joaquin Valley approved by the
29 voters shall reflect all of the following priorities:

30 (1) Emergency flood facility repairs, as provided in Section
31 9612.

32 (2) Urgent community flood protection, as provided in Section
33 9613.

34 (3) Investigation and assessment of flood protection facilities
35 in the Sacramento-San Joaquin Valley, as provided in Section
36 9614.

37 (4) Financial assistance for regional or local flood protection
38 plans, as provided in Section 9615.

39 (5) Delta levee projects, as provided in Section 5096.821 of the
40 Public Resources Code.

1 (6) Development of new strategies for flood protection in the
2 Sacramento-San Joaquin Valley, as provided in Section 9617.

3 (7) ~~Adding~~ *The addition* of facilities to the State Plan of Flood
4 Control, as provided in Section 9618.

5 (b) The establishment of these priorities does not preclude the
6 allocation of funds for any of the purposes described in subdivision
7 (a) or for local efforts to address flood protection. It is the intent
8 of the Legislature to allocate funding equitably among all the
9 priorities identified in this section.

10 9612. (a) The department shall correct deficiencies in flood
11 protection facilities that present an imminent risk of failure and
12 threaten human life, including, but not limited to, repair of critical
13 levee erosion, flood fighting, and flood channel clearing in
14 accordance with any declaration of a state of emergency by the
15 Governor.

16 (b) The department shall seek the maximum amount of federal
17 and local cost-sharing contributions as reasonably possible, but
18 shall not delay emergency repairs that are subject to a declaration
19 described in subdivision (a) in order to obtain those contributions.

20 9613. (a) Consistent with subdivision (b) of Section 5096.821
21 of the Public Resources Code, the department may implement
22 flood protection improvements for urban areas protected by
23 facilities of the State Plan of Flood Control if the director
24 determines, in writing, that all of the following apply:

25 (1) The improvements are necessary to address an urgent and
26 significant risk of flooding and require state funding before the
27 completion of the Central Valley Flood Protection Plan prepared
28 pursuant to Section 9617.

29 (2) The improvements will reduce or avoid risk to human life
30 in one or more urban areas and do not transfer significant flood
31 risks to other urban areas.

32 (3) The improvements will not impair or impede future changes
33 to regional flood protection or the Central Valley Flood Protection
34 Plan.

35 (4) The improvements will be maintained by a local agency
36 with a record of good maintenance of existing facilities of the State
37 Plan of Flood Control.

38 (5) The affected cities, counties, and other public agencies have
39 sufficient revenue resources for the operation and maintenance of
40 the facility.

1 (6) Upon the allocation of funds for a project, the proposed
2 project is ready for implementation.

3 (7) The improvements may provide public benefits in addition
4 to flood protection.

5 (8) The improvements comply with existing law.

6 (b) The flood protection improvements authorized by this section
7 may include improvements to specific facilities of the State Plan
8 of Flood Control or acquisition of flood easements in lands adjacent
9 to facilities of the State Plan of Flood Control to increase levels
10 of flood protection for urban areas in accordance with subdivision
11 (b) of Section 5096.821 of the Public Resources Code.

12 (c) The department shall investigate, develop, and establish a
13 floodway or bypass, acquire land, or construct one or more facilities
14 to significantly reduce flood stage in the San Joaquin River
15 Watershed.

16 9614. (a) The department shall investigate and assess, or
17 provide financial assistance to cities, counties, or other public
18 agencies to investigate and assess; the level of flood protection for
19 communities in the Sacramento-San Joaquin Valley, including
20 flood protection provided by the facilities of the State Plan of Flood
21 Control.

22 (b) The investigation and assessment may include levee
23 investigation, hydrological modeling, development of technological
24 capability for real-time flood monitoring and management,
25 evaluation of options to operate existing surface water reservoirs
26 to improve flood protection, and flood risk mapping.

27 (c) Assessments authorized by this section shall include
28 evaluation of all sources of flood risk, including seismic risk and
29 climate change to the extent information is available.

30 9615. (a) The department may provide financial assistance to
31 cities, counties, and other local public entities for repair,
32 rehabilitation, reconstruction, or replacement of levees, weirs,
33 bypasses, and facilities, including facilities of the State Plan of
34 Flood Control if all of the following apply:

35 (1) The affected cities or counties have adopted a regional or
36 local plan of flood protection that the department or the board
37 determines is consistent with the Central Valley Flood Protection
38 Plan.

(2) The project provides additional flood protection exceeding the 100-year standard for an area that is subject to significant flood risk.

(3) The affected cities, counties, or other local public entities have agreed to make contributions to cost-sharing, which may include money or in-kind contributions.

(4) The affected cities, counties, or other local public entities have identified adequate, long-term funding for operation and maintenance.

(5) The project complies with all laws, including provision for environmental mitigation required by federal, state, or local law, either directly or indirectly through environmental mitigation programs administered by the department.

(b) The department may provide financial assistance to cities, counties, and other local public entities to develop regional or local plans of flood protection that are described in paragraph (1) of subdivision (a). The regional or local plans of flood protection shall undertake to minimize risk of loss of life and provide for mitigation of loss of existing flood plain storage.

9616. Of the funds made available pursuant to Section 5096.821 of the Public Resources Code, not more than one hundred million dollars (\$100,000,000) may be allocated for the purposes of subdivision (c) of that section until the department and the Department of Fish and Game carry out the requirements set forth in Sections 139.2 and 139.4.

9617. (a) The department shall prepare a Central Valley Flood Protection Plan for the Sacramento-San Joaquin Valley that includes a description of both structural and nonstructural means for improving the performance and elimination of deficiencies of levees, weirs, bypasses, and facilities, including facilities of the State Plan of Flood Control, and, wherever feasible, a description of actions intended to meet multiple objectives, including each of the following purposes: of actions intended to meet multiple objectives.

(b) For the purposes of subdivision (a), actions intended to meet multiple objectives include actions to accomplish any of the following:

(1) Reduce the risk to human life, health, and safety from flooding.

1 (2) Expand the capacity of the flood protection system in the
2 Sacramento-San Joaquin Valley to either reduce flood flows or
3 convey floodwaters away from urban areas.

4 (3) Link the flood protection system with the water supply
5 system.

6 (4) Connect state flood protection decisions to local land-use
7 decisions for improvement of flood protection capability.

8 (5) Improve flood protection for urban areas to a level exceeding
9 the federal minimum 100-year standard, including increased
10 reliance on upstream floodway corridors.

11 (6) Provide sufficient flood protection for small communities
12 and rural areas to a standard deemed appropriate by the department.

13 (7) Promote natural dynamic hydrologic and geomorphic
14 processes.

15 (8) Reduce damage from flooding.

16 (9) Increase and improve the quantity, diversity, and connectivity
17 of riparian, wetland, flood plain, and shaded riverain aquatic
18 habitats, including the agricultural and ecological values of these
19 lands.

20 (10) Minimize the flood management system operation and
21 maintenance requirements.

22 (11) Promote the recovery and stability of native species
23 populations and overall biotic community diversity.

24 (12) Identify opportunities and incentives for increasing use of
25 floodway corridors.

26 (13) Provide a feasible, comprehensive, long-term financing
27 plan for implementing the plan.

28 ~~(b) The department shall prepare the Central Valley Flood~~
29 ~~Protection Plan in a manner that is consistent with the state~~
30 ~~planning priorities described in Section 65041.1 of the Government~~
31 ~~Code.~~

32 9618. (a) Upon completion of the Central Valley Flood
33 Protection Plan pursuant to Section 9617, the department may
34 identify additional facilities that may become facilities of the State
35 Plan of Flood Control, consistent with the Central Valley Flood
36 Protection Plan, if those facilities will increase the level of flood
37 protection for urban areas to exceed the 100-year standard.

38 (b) For the purposes of subdivision (a), facilities that may
39 become facilities of the State Plan of Flood Control include
40 bypasses, floodway corridors, flood plain storage, or other projects

- 1 that expand the capacity of the flood protection system in the
- 2 Sacramento-San Joaquin Valley to provide flood protection.

O